

§ 270.17f-3

17 CFR Ch. II (4-1-02 Edition)

274.220) and transmitted to the Commission promptly after each examination.

[Rule N-17F-2, 12 FR 6717, Oct. 11, 1947, as amended at 54 FR 32049, Aug. 4, 1989]

§ 270.17f-3 Free cash accounts for investment companies with bank custodians.

No registered investment company having a bank custodian shall hold free cash except, upon resolution of its board or directors, a petty cash account may be maintained in an amount not to exceed \$500: *Provided*, That such account is operated under the imprest system and is maintained subject to adequate controls approved by the board of directors over disbursements and reimbursements including, but not limited to fidelity bond coverage of persons having access to such funds.

(Sec. 17(f), 54 Stat. 815, 15 U.S.C. 80a-17(f), sec. 9, Pub. L. 91-547, 84 Stat. 1420)

[37 FR 9989, May 18, 1972]

§ 270.17f-4 Deposits of securities in securities depositories.

(a) For the purpose of this rule, a "securities depository" is a system for the central handling of securities where all securities of any particular class or series of any issuer deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery of the securities.

(b) A registered management investment company (investment company) or any qualified custodian may deposit all or any part of the securities owned by the investment company in an Eligible Securities Depository as defined in § 270.17f-7 in accordance with the provisions of § 270.17f-7 and applicable provisions of § 270.17f-5, or in:

(1) A clearing agency registered with the Commission under section 17A of the Securities Exchange Act of 1934 (clearing agency), which acts as a securities depository, or

(2) The book-entry system as provided in subpart O of Treasury Circular No. 300, 31 CFR part 306, subpart B of 31 CFR part 350, and the book-entry regulations of Federal agencies substantially in the form of subpart O, in ac-

cordance with the following paragraphs of this section.

(c) An investment company may deposit the securities in a clearing agency which acts as a securities depository under an arrangement that contains the following elements:

(1) The investment company has a system that is reasonably designed to prevent unauthorized officer's instructions and which provides, at least, for the form, content, and means of giving, recording, and reviewing the instructions. An "officer's instruction" is a request or direction to a clearing agency in the name of the investment company by one or more persons authorized by its board of directors to give it.

(2) Upon ceasing to act for an investment company, and subject to its own rules on contributions to a participants fund, the clearing agency shall deliver all securities held for the investment company to a successor clearing agency, custodian, or safekeeper under Rule 17f-2 (17 CFR 270.17f-2), to be named by the investment company. Where the investment company has not named one, the clearing agency shall deliver the investment company securities to a bank having the qualifications prescribed in section 26(a)(1) of the Act for trustees of unit investment trusts, to be held by the bank as custodian for the investment company under terms customary to a custodian agreement between banks and investment companies.

(3) The investment company, by resolution of its board of directors, initially approved the arrangement, and any subsequent changes thereto.

(d) The custodian may deposit the securities in a clearing agency which acts as a securities depository or the book-entry system, or both, under an arrangement that contains the following elements:

(1) The custodian may deposit the securities directly or through one or more agents which are also qualified to act as custodians for investment companies.

(2) The custodian (or its agent) shall deposit the securities in an account that includes only assets held by it for customers.

(3) The custodian shall send the investment company a confirmation of

any transfers to or from the account of the investment company. Where securities are transferred to that account, the custodian shall also, by book-entry or otherwise, identify as belonging to the investment company a quantity of securities in a fungible bulk of securities (i) registered in the name of the custodian (or its nominee) or (ii) shown on the custodian's account on the books of the clearing agency, the book-entry system, or the custodian's agent. for this purpose, the term "confirmation" means advice or notice of a transaction; it is not intended to require preparation by a custodian of the confirmation required of broker-dealers under the Securities Exchange Act of 1934.

(4) The custodian, or its agent which deposits the securities, shall promptly send to the investment company reports it receives from the appropriate Federal Reserve Bank or clearing agency on its respective system of internal accounting control. The custodian and all the agents through which the securities are deposited shall send to the investment company such reports on their own systems of internal accounting control as the investment company may reasonably request from time to time.

(5) The investment company, by resolution of its board of directors, initially approved the arrangement, and any subsequent changes thereto.

(Secs. 17(f) and 38(a) of the Act (15 U.S.C. 80a-17(f) and 80a-37(a))

[43 FR 50873, Nov. 1, 1978, as amended at 49 FR 36084, Sept. 14, 1984; 58 FR 49922, Sept. 24, 1993; 65 FR 25637, May 3, 2000]

§ 270.17f-5 Custody of investment company assets outside the United States.

(a) *Definitions.* For purposes of this section:

(1) *Eligible Foreign Custodian* means an entity that is incorporated or organized under the laws of a country other than the United States and that is a Qualified Foreign Bank or a majority-owned direct or indirect subsidiary of a U.S. Bank or bank-holding company.

(2) *Foreign Assets* means any investments (including foreign currencies) for which the primary market is outside the United States, and any cash

and cash equivalents that are reasonably necessary to effect the Fund's transactions in those investments.

(3) *Foreign Custody Manager* means a Fund's or a Registered Canadian Fund's board of directors or any person serving as the board's delegate under paragraphs (b) or (d) of this section.

(4) *Fund* means a management investment company registered under the Act (15 U.S.C. 80a) and incorporated or organized under the laws of the United States or of a state.

(5) *Qualified Foreign Bank* means a banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated as such by the country's government or an agency of the country's government.

(6) *Registered Canadian Fund* means a management investment company incorporated or organized under the laws of Canada and registered under the Act pursuant to the conditions of § 270.7d-1.

(7) *U.S. Bank* means an entity that is:

(i) A banking institution organized under the laws of the United States;

(ii) A member bank of the Federal Reserve System;

(iii) Any other banking institution or trust company organized under the laws of any state or of the United States, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by state or federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this section; or

(iv) A receiver, conservator, or other liquidating agent of any institution or firm included in paragraphs (a)(7)(i), (ii), or (iii) of this section.

(b) *Delegation.* A Fund's board of directors may delegate to the Fund's investment adviser or officers or to a U.S. Bank or to a Qualified Foreign Bank the responsibilities set forth in paragraphs (c)(1), (c)(2), or (c)(3) of this section, *provided that:*